

## Fetal Alcohol Syndrome: Implications for Sentencing in the Criminal Justice System Robin A. LaDue, Ph.D., and Tom Dunne

Richard H. was a seventeen year old Caucasian youth who had been arrested on an assault in the first degree charge. He was declined into the adult system and convicted on the charge. Prior to sentencing, the judge asked for a presentencing investigation to aid in placement and other sentencing issues.

Richard was the only child born to a young couple, age 22, who were both severely alcoholic. His mother died when Richard was two of alcohol-related causes; his father retained custody until he was killed in a shooting three years later. No relatives were available to take care of him and he was made a ward of the state.

Richard was placed in a therapeutic foster home shortly after his father's death. He was the only child in this home. Both parents were trained to meet the special emotional needs of children such as Richard. After he had been in this home for a month, his foster parents began to notice Richard having high levels of activity, distractibility, impulsivity, and an inability to learn from past experience. He was small in stature and had unusual facial features. Based on their past work with children with special needs, Richard's foster parents suspected he might have Fetal Alcohol Syndrome (FAS). They took him to the local genetics clinic where he received this diagnosis.

Along with the diagnostic examination, Richard had a psychological evaluation. This first evaluation and later ones showed him to have an average IQ, 91-101 but to have adaptive behavior scores well below his chronological age. His foster family put him into therapy and took special behavioral management training as well as educating themselves about the possible long-term effects of prenatal alcohol exposure.

Richard, despite the intensive interventions, continued to have significant social problems, a short attention span, and an inability to learn from past experiences. Although his IQ was in the normal range, he had significant problems in reading, math, and any topic requiring memory and abstracting skills. Due to his acting out behavior and learning problems, he was placed in a special education program.

Richard's behavior deteriorated and he began to have legal problems. He was arrested for the first time at age twelve for stealing a car. He received probation, community service hours, and counseling for this offense. However, these interventions did not work and Richard's offending increased in severity.

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By the time Richard was fifteen, he had amassed a long history of robbery, burglary, armed assault, car thefts and drug-related offenses. He left his foster home to live with friends and on the streets. He became peripherally involved with a gang, however this was more of him being "used" rather than actually considered part of the gang. The other youths often encouraged him to steal cars and used him to courier drugs.

It was in conjunction with his gang activities that Richard was arrested on his current charge of assault in the first degree. Two youths from a rival gang challenged Richard one night over a car he had stolen. All of the youths including Richard had been drinking. One of the other gang members called Richard

a name and then walked on down the street. Richard became very angry and ran after the youth.

Richard pulled a knife from his pocket and stabbed the youth in the back at least six times. The third youth tried to stop Richard and was stabbed in the left arm. Richard dropped the knife and ran. The police were called and he was arrested within a half hour of the incident. He was charged with assault and a decline hearing was held. Based on the significant criminal history, Richard was declined into the adult justice system and tried as an adult.

He was convicted of first degree assault. Prior to imposing a sentence, the Court asked for a presentencing investigation to help determine what placement and services might be most useful for Richard in the present and the long run.

### *Fetal Alcohol Syndrome— A brief overview*

Fetal Alcohol Syndrome (FAS) is a continuum of effects secondary to prenatal alcohol exposure. The diagnosis is made by a specially trained physician, for example a dysmorphologist or geneticist. It is based on a specific pattern of deficits in three key areas: growth, facial and other physical abnormalities, and central nervous system (CNS) dysfunction.

Growth retardation is of prenatal onset; however many adolescents and adults with FAS actually are not growth deficient. In addition, family and genetic effects must be taken into account when determining if a child is growth deficient.

Women who drink heavily during the first part of their pregnancy but then stop, may have babies that are normal weight but still have the facial features

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and CNS damage consistent with FAS.

The characteristic pattern of facial abnormalities includes short palpebral fissures, a wide innercanthal distance, ptosis, strabismus, a long smooth philtrum, and thin upper lip. These features are more easily seen in younger children; they tend to become more normalized in adolescents and adults. Again, for this reason, it is important for the diagnosis to be made by the appropriate professional.

Other common physical abnormalities associated with prenatal alcohol exposure include, but are not limited to, pectus excavatum (sunken chest), clinodactyly (crooked fingers), compitadactyly (fingers and toes pulled up due to poor muscle control), ventral/atrial septal defects, heart murmurs, scoliosis and fusion of the ulnar/radial bones at the elbow. This last effect significantly limits the range of motion. Hearing, vision, and coordination can also be negatively affected.

However, the most and far reaching effects of prenatal alcohol exposure involves the central nervous system. Alcohol, as a teratogen, or birth defect causing drug, does a "once over lightly" to the brain. Of particular concern, particularly as it impacts social comprehension and functioning, is the damage to the frontal lobes. Abstracting abilities, memory, social skills, and the ability to connect cause and effect can all be decreased due to this prenatal exposure.

These cognitive defects and the resulting behavior are what need to be understood and presented to the Court. They will be discussed further in the remainder of this article.

**Presentencing Investigations**

The purpose of the presentencing investigation is to aid the Court in making appropriate decisions regarding the

length of sentence, place of incarceration, services needed, and restitution. The presentencing investigation is conducted, at least in the State of Washington, by a presentencing officer, employed by the Department of corrections. The presentencing officer is charged with gathering information to be presented to the Court. This information may include, but not limited to, the following: background information from family, victims, and other relevant informants; medical records; school records; service records; participation in therapy and other special services; past criminal offenses, juvenile and adult; seriousness of current offense; and mitigating circumstances.

Each of these will be discussed in detail in the next issue of the *FEN Pen* as they may apply to a presentencing investigation.

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This is the first part of the fourth and final article in a series on legal issues and Fetal Alcohol Syndrome.

The second part of this article will appear in the next issue of the *FEN Pen*.

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*A Note from the Coordinator*

It seems fitting that I take on this enormous task in January, as we celebrate the birthday of Martin Luther King, Jr. For I too have a dream. My dream is that, TOGETHER, we can have an impact on the lives of children and families affected by Fetal Alcohol Syndrome.

I know I can count on all of you to help make my dream come true.

We have a lot of work to do in order to "catch up" with our phone calls and other tasks. If you have been waiting for information or assistance, please call me at 800-462-5254 or 608-262-8971. My email address is:

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I want to thank all of you for forging the path and lighting the way...and I look forward to joining you for the journey FEN will take during 1997 and into the future.